

**HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY**

WRIT APPEAL No. 82 OF 2007

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Between:

Nalisetty Sridhar

.... Appellant

AND

The Senior Manager,
Engineering and Purchase (LPG South Zone)
Hindustan Petroleum Corporation Limited,
Chennai & others

.....Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri A.V. Sessa Sai

Counsel for respondent No.1 : Shri P.V. Sanjay Kumar

Counsel for respondent No. 2 : Shri V.V.N. Narayana Rao

Dated: 25.01.2007

Per G.S.SINGHVI, CJ

Having failed to persuade the learned Single Judge to annul the decision of the Senior Manager, Engineering and Purchase (LPG South Zone), Hindustan Petroleum Corporation Limited (respondent No.1 herein) to accept the tender submitted by respondent No.2 - M/s Essen LPG Bottling Plant Private Limited for LPG cylinder bottling assistance, the appellant has preferred this appeal under Clause 15 of the Letters Patent.

The Facts:

For the purpose of taking assistance from the private bottling plant in Nellore town for LPG cylinder bottling, respondent No.1 issued tender notice dated 20.12.2005, the relevant extracts of which are reproduced below:

“ Sealed tenders under two bid system (Un-priced & priced) are invited in prescribed forms from tenderer who:

- (1) Is owning a Bottling Plant in operating condition (OR)
- (2) Is having suitable land and willing to construct at his cost and operate the Bottling Plan for LPG cylinder bottling for HPCL.

The offered Plant should have required licenses from CCOE/PESO for bottling & allied operations and conforming to the Statutory & Regulatory requirements including those relating to Safety &Environment. In case of land being offered. Tenderer should have necessary basic approvals viz., NOC from

local authority, CCOE/PESO, proof of financial capability to construct a plant within 90-180 days.

The assistance is sought towards bottling of HPCL owned cylinders from the bulk LPG supplied by HPCL. The Ready built plant on this land offered where the tenderer is intending to construct and operate the Plant for HPCL shall be situated within a distance of 60 kms radius from Nellore City Limits abutting State or National Highway. The bottling assistance required would be approx. 12000 MT per annum for a period of two years with the renewal option for one more year on the same rates, terms & conditions at the sole discretion of Corporation. All the required credential documents as per tender requirement shall be submitted along with the un-priced bid, failing which the bid shall be rejected. The documents shall be reviewed & analysed by HPCL for establishing the party's capabilities, HPCL reserves the right to select and plant or none and selection of plant by HPCL shall be on the basis of least cost option. The decision of HPCL would be final in this regard."

In all, six parties including respondent No.2 submitted their tenders. Two of the tenderers were disqualified on account of non-submission of Earnest Money Deposit and one was disqualified because it did not own land for establishing bottling plant. The credential evaluation of the offers made by the remaining three parties viz. 1) Keerthi Petrochem Private Limited; 2) Mahalakshmi Petro Products and 3) respondent No.2 was carried out on 20.12.2005 and the price bids were opened on 03.02.2006 at Chennai. At that stage, the petitioner filed Writ Petition No.2091 of 2006 questioning the consideration of the tender of M/s Keerthi Petrochem Private Limited on the ground it does not fulfill the eligibility conditions. While issuing notice, the learned Single Judge granted liberty to Hindustan Petroleum Corporation Limited (for short 'the Corporation') to proceed with the finalization of bids subject to the condition that if the decision was to award contract to M/s Keerthi Petrochem Private Limited, then the same be not implemented. However, as the offer made by respondent No.2 was found to be most competitive, Letter of Intent dated 10.03.2006 was issued in favour of the said respondent. On receipt of the Letter of Intent, respondent No.2 made investment of Rs.25 lacs in making arrangements for putting up the plant.

After seven months of the opening of credential bids and four months of the issue of Letter of Intent to respondent No.2, the petitioner filed Writ Petition No.14293 of 2006 for nullifying the decision of respondent No.1. In the affidavit filed by him, the appellant pleaded that respondent No.2 did not satisfy the conditions of eligibility enumerated in the tender notice and Annexure I appended thereto inasmuch as the land allegedly owned by it was, in fact, government land and the sale transaction through which the land had been purchased was sham. The appellant alleged that the authorities of the Corporation deliberately overlooked the deficiency in the tender of respondent No.2 and arbitrarily rejected his tender.

In the counter-affidavit filed by respondent No.1, it was averred that offer made by respondent No.2 was accepted because its bid was found most competitive. According to respondent No.1, price bids were opened in the presence of eligible tenderers, but no objection was raised by the petitioner (the appellant herein) to the eligibility of respondent No.2. In paragraphs 7 and 9, respondent No.1 spelt out his satisfaction on the issue of eligibility of respondent No.2 in the following words:

" As per the tender notice published by the Corporation on 28.11.2005 in the Hindu and Eenadu news papers, it is clearly stipulated that in the case of land being offered, the tenderer should have necessary basic approvals viz. NOC from local authority, CCOE/PESO, proof of financial capability to construct a plant within 90-180 days. Further, the 'Instructions to Tenderers' contained in the Tender Document clearly stated that tenderers having suitable land and willing to construct a LPG plant need to submit the following documents along with the credential bid:

- 1) Suitable land in the name of the Tenderer and the tenderer has to submit a copy of the clear title deed along with NOC from the local authority.
- 2) Basic approval from CCOE/PESO.
- 3) Proof of financial capability to construct a plant within 90-180 days.

Under the sub-heading 'Technical Bid' in Annexure I of the Instructions to Tenderers, it is stated that clearance has to be produced from (1)

Board for Power, (2) Gram Panchayat, (3) Country & Town Planning Department and (4) Basic approval from CCOE/PESO. It may be noted that only basic clearances were required for qualifying in the credential bid in line with the tender terms and conditions. The tenderer offering land has to submit all statutory approvals at the time of commencing the plant, at which stage all the legal requirements in connection with the land are to be nullified. In the present case, as the selected tenderer submitted clearance from the Gram Panchayat, it was found sufficient for clearing the technical bid.

The tender conditions require the tenderer to submit the copy of the clear title deed of the land and M/s Essen LPG Bottling Plant Private Limited not only furnished a copy of the registered sale deed in its favour but also furnished the Letter dated 16.12.2005 issued by the Secretary of the Gram Panchayat in proof of its having the required approval from the local authority. In the said letter, the Secretary of the Gram Panchayat certified that the Panchayat has no objection for the commissioning of the plant at the land registered in favour of M/s Essen LPG Bottling Plant Private Limited under Sale Deed bearing Document No.2771 of 2005. During the evaluation of the credential bid, the original Title Deed was also verified and was found to be in order. The tenderer therefore asserted a clear title over the land offered which is in keeping with the tender terms and conditions. Thus, there are no procedural defects in the tender process as alleged by the Petitioner and the entire exercise was in strict conformity with the terms and conditions laid down in the tender documents. It is therefore prayed that this Honble Court may be please to consider the submission made hereinabove, hold the Writ Petition as being devoid of substance and merit and dismiss the same with costs."

In a separate counter affidavit filed on behalf of respondent No.2, an objection was taken to the maintainability of the writ petition on the ground of unexplained delay. On merits, it was averred that the competent authority had accepted the tender after feeling convinced about the genuineness of the sale transaction and the capacity of respondent No.2 to establish the bottling plant.

The learned Single Judge accepted the version set out in the counter-affidavits and held that the selection of respondent No.2 does not suffer from any legal infirmity. The learned Single Judge took cognizance of the fact that the Gram Panchayat had given no objection to the commissioning of bottling plant and held that respondent No.1 did not commit any illegality by accepting the bid of respondent No.2. The learned Single Judge further held that there was no need to obtain permission from the Country and Town Planning Department because the proposed plant is located outside Nellore town.

We have heard Shri A.V. Sessa Sai, learned counsel for the appellant, Shri P.V. Sanjay Kumar, learned counsel for respondent No.1, Shri V.V.N. Narayana Rao, learned counsel for respondent No.2. In our opinion, the appeal is wholly merit less and is liable to be dismissed with costs.

We are in complete agreement with the learned Single Judge that the tender submitted by respondent No.2 satisfied the conditions of eligibility enumerated in the tender notice and the competent authority of the Corporation did not commit any illegality by accepting the tender of the said respondent. Undisputedly, respondent No.2 had purchased land by registered sale deed. None of the district authorities raised any objection to the sale transaction on the ground that the land in question belongs to the government. Therefore, there was no occasion for respondent No.1 to make further probe

into the legality of the sale transaction. The petitioner's objection to the eligibility of respondent No.2 on the ground that it had not obtained clearance from the Country and Town Planning Department was rightly overlooked by respondent No.1 because the land purchased by respondent No.2 is situated outside Nellore town.

Following are the other reasons for our disinclination to entertain the appellant's challenge to the decision of respondent No.1 to accept the tender of respondent No.2.

- (1) The petitioner (the appellant herein) was not one of the six persons who had submitted tenders pursuant to tender notice issued by the competent authority of the Corporation. Therefore, he did not have the locus to challenge the Letter of Intent issued in favour of respondent No.2. M/s Maha Lakshmi Petro Products, which was one of the three short-listed tenderers and to whom the appellant claims to be representing, has not filed writ petition to question the acceptance of tender submitted by respondent No.2 and, in that view of the matter, we do not find any justification for entertaining the appellant's prayer.
- (2) M/s Hindustan Petroleum Corporation Limited on whose behalf the tender notice was issued and the Letter of Intent was issued in favour of respondent No.2 was not impleaded as party to the writ petition. Respondent No.1 is only an officer of the Corporation and not the Corporation which has got a juridical personality and which can sue and be sued in its own name. In our opinion, without impleading the Corporation as party respondent, the petitioner could not have persuaded the learned Single Judge to annul the Letter of Intent issued in favour of respondent No.2.
- (3) The petitioner did not offer any explanation of the long time gap of almost seven months between the date on which credential bids were opened i.e. 20.12.2005 and the date on which the writ petition was filed i.e. 10.03.2006. In a case like the present one, the delay of seven months has to be treated as fatal because in furtherance of Letter of Intent issued by the competent authority on 10.03.2006, respondent No.2 had made huge investment of Rs. 25 lacs for setting up the LPG bottling plant. Even if the time gap between the date of issue of Letter of Intent and the date of filing of writ petition is taken into consideration, the unexplained delay of four months is sufficient for holding the petitioner guilty of laches.

For the reasons mentioned above, the appeal is dismissed. For dragging the officers of the Corporation and respondent No.2 in wholly unnecessary litigation, the appellant is saddled with costs of Rs.10,000/- out of which, Rs.5,000/- shall be paid to respondent No.1 and the remaining Rs.5,000/- shall be paid to respondent No.2.

As a sequel to dismissal of the writ appeal, W.A.M.P.No.131 of 2007 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

25.01.2007
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